

### **REMARKS**

Claims 1-14 have been cancelled. New claims 15-23 have been added. No new matter has been added. Claims 15-23 are pending.

#### ***Disclaimers Relating to Claim Interpretation and Prosecution History Estoppel***

Claims have been amended, and claims have been canceled, notwithstanding the belief that these claims were allowable. Except as specifically admitted below, no claim elements have been narrowed. Rather, cosmetic amendments have been made to the claims and to broaden them in view of the cited art.

Any reference herein to “the invention” is intended to refer to the specific claim or claims being addressed herein. The claims of this application are intended to stand on their own and are not to be read in light of the prosecution history of any related or unrelated patent or patent application. Furthermore, no arguments in any prosecution history relate to any claim in this application, except for arguments specifically directed to the claim.

#### ***Claim Rejections - 35 USC § 102***

The Examiner rejected claims 1-4, 10/1-4, and 12 under 35 USC § 102(b) as anticipated by Kuroiwa (USP 6,246,650). Claims 1-4, 10/1-4, and 12 have been canceled.

The Examiner rejected claims 5-8, 10/5-8, and 13 under 35 USC § 102(b) as anticipated by McKernan (US 2001/0046196). Claims 5-8, 10/5-8, and 13 have been canceled.

#### ***Claim Rejections - 35 USC § 103***

The Examiner rejected claims 9, 11, and 14 under 35 USC § 103 as obvious from Kuroiwa (USP 6,246,650) in light of McKernan (US 2001/0046196). Claims 9, 11, and 14 have been canceled.

New independent claim 15 is similar to canceled claim 9 in that the rotational speed is set based on both a jitter amount and an error rate amount. It is respectfully submitted that new claim 15 may not be properly rejected under 35 USC 103 as obvious from Kuroiwa in light of McKernan.

Section 2143 of the MPEP states the basic requirements to establish the obviousness of a claim in light of one or more references, as follows:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Kuroiwa describes an apparatus and method for controlling the rotational speed of a rotating disc based on a jitter signal derived from the light reflected from the disc. Kuroiwa teaches the use of this technique for speed control both before performing a reproducing process (FIG. 13/14) and while performing a reproducing process (FIG. 16/17).

McKernan describes an apparatus and method for controlling the rotational speed of a rotating disc based on an error rate level. McKernan describes (FIG. 2, paragraph 0027) a read operation that sets an initial rotational speed based on a function of one or more state variables. The radial position of the laser on the disc is given as an example of a state variable. After setting an initial rotational speed for a given track, the read operation is started and the rotational speed is set thereafter based on an error rate level. Although McKernan discusses the adverse effects of disc wobble and vibration on error rates, McKernan does not teach or suggest that the disc jitter, wobble, or vibration be measured and used to control the rotational speed.

It is respectfully submitted that new claim 15 may not be properly rejected under 35 USC 103 as obvious from Kuroiwa in light of McKernan on two grounds. First, neither Kuroiwa or McKernan

teaches or suggests the limitation “adjusts the rotational speed based on the error rate amount during the reproducing process, after having adjusted the rotation speed based on the jitter amount” of claim 15. Kuroiwa describes only a servo control base on jitter amount, and McKernan describes only a servo control based on error rate level. Neither Kuroiwa or McKernan teach or suggest adjusting the rotational speed based on jitter level prior to the reproducing process and subsequently adjusting the rotational speed based on error rate level during the reproducing process.

Second, neither Kuroiwa or McKernan provide any teaching or suggestion to combine the references. Both Kuroiwa and McKernan teach complete speed control apparatus and methods that include both setting the initial rotational speed of a disc and then adjusting the rotational speed of the disc if appropriate during a reproducing process. Neither Kuroiwa or McKernan indicates any deficiency in their described methods, and neither provides any motivation to combine the references as combined in the Office action.

Since neither Kuroiwa or McKernan teaches or suggests the limitation “adjusts the rotational speed based on the error rate amount during the reproducing process, after having adjusted the rotation speed based on the jitter amount”, and neither Kuroiwa or McKernan provides any motivation to combine the references, it is respectfully submitted that claim 15 is allowable over the cited references. Claims 16-19 are also held to be allowable as depending from an allowable base claim.

New independent claim 20 is a method claim containing limitations analogous to the limitations of apparatus claim 15. It is respectfully submitted that claim 20 is allowable over the cited references. Claims 21-23 are also held to be allowable as depending from an allowable base claim.

***Conclusion***

It is submitted, however, that the independent and dependent claims include other significant and substantial recitations which are not disclosed in the cited references. Thus, the claims are also patentable for additional reasons. However, for economy the additional grounds for patentability are not set forth here.

In view of all of the above, it is respectfully submitted that the present application is now in condition for allowance. Reconsideration and reexamination are respectfully requested and allowance at an early date is solicited.

The Examiner is invited to call the undersigned registered practitioner to answer any questions or to discuss steps necessary for placing the application in condition for allowance.

Respectfully submitted,

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